



**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2018-0694; FRL-10017-06-Region 5]**

**Air Plan Approval; Ohio; Infrastructure SIP Requirements  
for the 2015 Ozone NAAQS**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve elements of a state implementation plan (SIP) submission from Ohio regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2015 ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2018-0694 at <http://www.regulations.gov>, or via email to [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted,

comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **"FOR FURTHER INFORMATION CONTACT"** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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Rineheart.Rachel@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background of this SIP submission?

II. What is EPA’s analysis of this SIP submission?

III. What action is EPA taking?

IV. Statutory and Executive Order Reviews.

**I. What is the background of this SIP submission?**

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This type of SIP submission is commonly referred to as an “infrastructure SIP.” These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through our

September 13, 2013, Infrastructure SIP Guidance (EPA's 2013 Guidance) and through regional actions on infrastructure submissions.<sup>1</sup> Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.<sup>2</sup> EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

## **II. What is EPA's analysis of this SIP submission?**

On September 28, 2018, Ohio provided a detailed synopsis of how various components of its SIP meet each of the applicable requirements in section 110(a)(2) for the 2015 ozone NAAQS, as applicable. The following review evaluates the state's submission.

*A. Section 110(a)(2)(A) - Emission limits and other control measures.*

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<sup>1</sup> EPA explains and elaborates on these ambiguities and its approach to address them in our September 13, 2013, Infrastructure SIP Guidance (available at [https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance\\_on\\_Infrastructure\\_SIP\\_Elements\\_Multipollutant\\_FINAL\\_Sept\\_2013.pdf](https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf), as well as in numerous agency actions, including EPA's prior action on Ohio's infrastructure SIP to address the 2012 fine particulate matter (PM<sub>2.5</sub>) NAAQS (81 FR 64072, September 19, 2016).

<sup>2</sup> See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. EPA*, No. 16-71933 (Aug. 30, 2018).

This section requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.<sup>3</sup> In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

Under Ohio Revised Code (ORC) 3704.03, the Ohio Environmental Protection Agency (OEPA) holds the authority to create new rules and implement existing emission limits and controls. Authority to monitor, update, and implement revisions to Ohio's SIP, including revisions to emission limits and control measures as necessary to meet NAAQS is contained in ORC 3704.03. Authority related to specific pollutants, including the establishment of ambient air quality standards and increments, identification of nonattainment areas, air resource allocations, and performance and emissions standards, is contained in ORC 3704.03.

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<sup>3</sup> e.g., EPA's final rule on "National Ambient Air Quality Standards for Lead." 73 FR 66964 at 67034.

Authority for OEPA to create new rules and regulations is found in ORC 3704.3. ORC 3704.03 (A) and (X) expressly confer rulemaking authority to the Director of environmental protection. ORC 3704.03(A) and (E) require that OEPA develop programs and promulgate rules for the prevention control, and abatement of air pollution. ORC 3704.03(D) requires that OEPA promulgate ambient air quality standards similar to the NAAQS.

EPA's 2013 Guidance states that to satisfy section 110(a)(2)(A) requirements, "an air agency's submission should identify existing EPA-approved SIP provisions or new SIP provisions that the air agency has adopted and submitted for EPA approval that limit emissions of pollutants relevant to the subject NAAQS, including precursors of the relevant NAAQS pollutant where applicable." OEPA identified existing controls and emission limits in the Ohio Administrative Code that can be applied to the 2015 ozone NAAQS. These regulations include controls and emission limits for volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>), which are precursors to ozone. VOC as an ozone precursor is controlled by Ohio Administrative Code (OAC) 3745-14, and NO<sub>x</sub> as an ozone precursor is controlled by OAC 3745-21.

In this rulemaking, EPA is not proposing to approve

any new provisions in OAC 3745 that have not been previously approved by EPA. EPA is also not proposing to approve or disapprove any existing state provisions or rules regulated to start-up, shutdown or malfunction or director's discretion in the context of section 110(a)(2)(A). EPA has determined that Ohio's SIP provides the required basic structural provisions for the implementation of the NAAQS and proposes to find that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2015 ozone NAAQS.

*B. Section 110(a)(2)(B) - Ambient air quality monitoring/data system.*

This section requires SIPs to include provisions to establish and operate ambient air quality monitors, collect and analyze ambient air quality data, and make these data available to EPA upon request. The review of the annual monitoring plan includes EPA's determination that the state: (i) monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and, (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

In accordance with 40 CFR part 53 and 40 CFR part 58, OEPA continues to operate an air monitoring network, which is used to determine compliance with the NAAQS. OEPA enters air monitoring data into AQS, and the state provides EPA with prior notification when changes to its monitoring network or plan are being considered. Further, OEPA submits annual monitoring network plans to EPA. EPA approved the state's 2020-2021 Annual Air Monitoring Network Plan on September 23, 2020, including the plan for the State's ozone monitoring network. EPA proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2015 ozone NAAQS.

*C. Section 110(a)(2)(C) - Program for enforcement of control measures; minor NSR; PSD.*

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet new source review (NSR) requirements under prevention of significant deterioration (PSD) and nonattainment NSR (NNSR) programs. Part C of the CAA (sections 160 - 169B) addresses PSD, while part D of the CAA (sections 171 - 193) addresses NNSR requirements. EPA's 2013 Guidance states that the NNSR requirements of section 110(a)(2)(C) are generally outside the scope of infrastructure SIPs;



however, a state must provide for regulation of minor sources and minor modifications (minor NSR).

1. Program for enforcement of control measures.

A state's infrastructure SIP submission should identify the statutes, regulations, or other provisions in the SIP that provide for enforcement of emission limits and control measures. OEPA maintains an enforcement program to ensure compliance with SIP requirements. OEPA compiles all air pollution control enforcement settlements in the state and makes them available for public review on its website. ORC 3704.03(R) provides the Director of OEPA with the authority to implement the enforcement program as well as the authority to implement the NSR provisions within OAC 3745-31. EPA proposes that Ohio has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

2. Minor NSR.

An infrastructure SIP submission should identify the existing EPA-approved SIP provisions that govern the minor source pre-construction program that regulates emissions of the relevant NAAQS pollutant. EPA approved Ohio's minor NSR program on February 21, 2002 (see 67 FR7954); since that date, OEPA and EPA have relied on the existing minor NSR program to ensure that new and modified sources not

captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS. As stated in EPA's 2013 Guidance, the CAA allows EPA to approve infrastructure SIP submissions that do not implement the 2002 NSR Reform Rules. Therefore, EPA is not proposing action on existing NSR Reform regulations for Ohio. EPA proposes that Ohio has met the minor NSR requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

### 3. PSD.

The evaluation of each state's submission addressing the PSD requirements of section 110(a)(2)(C) covers: a. PSD provisions that explicitly identify NO<sub>x</sub> as a precursor to ozone in the PSD program; b. identification of precursors to PM<sub>2.5</sub><sup>4</sup> and the identification PM<sub>2.5</sub> and PM<sub>10</sub><sup>5</sup> condensables in the PSD program; c. PM<sub>2.5</sub> increments in the PSD program; and d. greenhouse gas (GHG) permitting and the "Tailoring Rule" in the PSD program.<sup>6</sup> Some PSD requirements under

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<sup>4</sup> PM<sub>2.5</sub> refers to particles with an aerodynamic diameter of less than or equal to 2.5 micrometers, oftentimes referred to as "fine" particles.

<sup>5</sup> PM<sub>10</sub> refers to particles with an aerodynamic diameter of less than or equal to 10 micrometers.

<sup>6</sup> In EPA's April 28, 2011, proposed rulemaking for infrastructure SIPs for the 1997 ozone and PM<sub>2.5</sub> NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (see 76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012, proposed rulemaking for infrastructure SIPs for the 2006 PM<sub>2.5</sub> NAAQS (see 77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address NO<sub>x</sub> as a precursor to ozone, PM<sub>2.5</sub> precursors, PM<sub>2.5</sub> and

section 110(a)(2)(C) overlap with elements of section 110(a)(2)(D)(i), section 110(a)(2)(E), and section 110(a)(2)(J). These links will be discussed in the appropriate areas below.

a. PSD provisions that explicitly identify NO<sub>x</sub> as a precursor to ozone in the PSD program.

EPA's "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard - Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline" (Phase 2 Rule) was published on November 29, 2005 (see 70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO<sub>x</sub> as a precursor to ozone (70 FR 71612 at 71679, 71699-71700). This requirement was codified in 40 CFR 51.166.<sup>7</sup>

The Phase 2 Rule required that states submit SIP revisions incorporating the requirements of the rule,

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PM<sub>10</sub> condensables, PM<sub>2.5</sub> increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP, including the 2015 ozone NAAQS.

<sup>7</sup> Similar changes were codified in 40 CFR 52.21.

including these specific NO<sub>x</sub> as a precursor to ozone provisions, by June 15, 2007 (70 FR 71612 at 71683, November 29, 2005).

EPA approved revisions to Ohio's PSD SIP reflecting these requirements on October 28, 2014 (79 FR 64119), and therefore proposes to find that Ohio has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

b. Identification of precursors to PM<sub>2.5</sub> and the identification of PM<sub>2.5</sub> and PM<sub>10</sub> condensables in the PSD program.

On May 16, 2008 (see 73 FR 28321), EPA issued the Final Rule on the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)" (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct PM<sub>2.5</sub> and other pollutants that contribute to secondary PM<sub>2.5</sub> formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of PM<sub>2.5</sub>, otherwise known as precursors. In the 2008 rule, EPA identified precursors to PM<sub>2.5</sub> for the PSD program to be sulfur dioxide (SO<sub>2</sub>) and NO<sub>x</sub> (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO<sub>x</sub>

emissions in an area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations). The 2008 NSR Rule also specifies that VOCs are not considered to be precursors to PM<sub>2.5</sub> in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient PM<sub>2.5</sub> concentrations.

The explicit references to SO<sub>2</sub>, NO<sub>x</sub>, and VOCs as they pertain to secondary PM<sub>2.5</sub> formation are codified at 40 CFR 51.166(b) (49) (i) (b) and 40 CFR 52.21(b) (50) (i) (b). As part of identifying pollutants that are precursors to PM<sub>2.5</sub>, the 2008 NSR Rule also required states to revise the definition of "significant" as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b) (23) (i) and 40 CFR 52.21(b) (23) (i) define "significant" for PM<sub>2.5</sub> to mean the following emissions rates: 10 tons per year (tpy) of direct PM<sub>2.5</sub>; 40 tpy of SO<sub>2</sub>; and 40 tpy of NO<sub>x</sub> (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO<sub>x</sub> emissions in an area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes

was May 16, 2011 (73 FR 28321 at 28341, May 16, 2008).<sup>8</sup>

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in PM<sub>2.5</sub> and PM<sub>10</sub> emission limits in NSR permits. Instead, EPA determined that states had to account for PM<sub>2.5</sub> and PM<sub>10</sub> condensables for applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in PSD permits beginning on or after January 1, 2011. This requirement is codified in 40 CFR 51.166(b)(49)(i)(a) and 40 CFR 52.21(b)(50)(i)(a). Revisions to states' PSD programs incorporating the inclusion of condensables were required

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<sup>8</sup> EPA notes that on January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir.), held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM<sub>10</sub> nonattainment areas (Title I, part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1 (*Natural Resources Defense Council v. EPA*, No. 08-1250). As the subpart 4 provisions apply only to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for PM<sub>2.5</sub> attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR rule in order to comply with the court's decision. Accordingly, EPA's approval of Ohio's infrastructure SIP as to elements (C), (D)(i)(II), or (J) with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion.

The Court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

be submitted to EPA by May 16, 2011 (73 FR 28321 at 28341, May 16, 2008).

EPA approved revisions to Ohio's PSD SIP reflecting these requirements on October 28, 2014 (79 FR 64119), and therefore EPA proposes to find that Ohio has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

c. PM<sub>2.5</sub> increments in the PSD program.

On October 20, 2010, EPA issued the final rule on the "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>) - Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (2010 NSR Rule). This rule established several components for making PSD permitting determinations for PM<sub>2.5</sub>, including a system of "increments" which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c), and are included in the table below.

**Table 1: PM<sub>2.5</sub> Increments Established by the 2010 NSR Rule in micrograms per cubic meter**

	Annual arithmetic mean	24-hour max
Class I	1	2
Class II	4	9
Class III	8	18

The 2010 NSR Rule also established a new “major source baseline date” for PM<sub>2.5</sub> as October 20, 2010, and a new trigger date for PM<sub>2.5</sub> as October 20, 2011. These revisions are codified in 40 CFR 51.166(b)(14)(i)(c) and (b)(14)(ii)(c), and 40 CFR 52.21(b)(14)(i)(c) and (b)(14)(ii)(c). Lastly, the 2010 NSR Rule revised the definition of “baseline area” to include a level of significance of 0.3 micrograms per cubic meter, annual average, for PM<sub>2.5</sub>. This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i).

EPA approved revisions to Ohio’s PSD SIP reflecting these requirements on October 28, 2014 (79 FR 64119), and therefore EPA proposes to find that Ohio has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

d. GHG permitting and the “Tailoring Rule” in the PSD program.



With respect to the requirements of section 110(a)(2)(C) as well as section 110(a)(2)(J), EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the state has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of element D(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Ohio currently has a SIP-approved PSD program in place that covers all regulated NSR pollutants. Ohio has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including GHGs.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S.Ct. 2427. The Supreme Court said that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain

limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) issued an amended judgment vacating the regulations that implemented Step 2 of EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by EPA, the application of the BACT requirement to GHG emissions from Step 1 or "anyway" sources. With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), "to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification."

EPA is planning to take additional steps to revise Federal PSD rules in light of the Supreme Court opinion and subsequent D.C. Circuit judgment. Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process until they have more information about the planned revisions to EPA's PSD regulations. EPA is not expecting states to have revised their PSD programs in anticipation of EPA's planned actions to revise its PSD program rules in response to the court decisions. For purposes of infrastructure SIP submissions, EPA is only evaluating such submissions to assure that the state's program addresses GHGs consistent with both court decisions.

On February 14, 2020, EPA updated the Ohio SIP to include revised PSD rules reflecting the Supreme Court decision and D.C. Circuit judgement, and preserving PSD permitting requirements for GHGs for "anyway" sources (see 85 FR 8406). EPA proposes to find that the Ohio SIP is sufficient to satisfy Elements (C), (D)(i)(II), and (J) with respect to GHGs. This is because the PSD permitting program previously approved by EPA into the SIP continues to require that PSD permits issued to "anyway sources" contain limitations on GHG emissions based on the

application of BACT.

*D. Section 110(a)(2)(D) - Interstate transport.*

Section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another state. Section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required of any other state to prevent significant deterioration of air quality, or from interfering with measures required of any other state to protect visibility. Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 and section 115 (relating to interstate and international pollution abatement, respectively).

1. Significant contribution to nonattainment.

In this rulemaking, EPA is not evaluating section 110(a)(2)(D)(i)(I) requirements relating to significant contribution to nonattainment for the 2015 ozone NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking.

## 2. Interference with maintenance.

In this rulemaking, EPA is not evaluating section 110(a)(2)(D)(i)(I) requirements relating to interference with maintenance for the 2015 ozone NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking.

## 3. Interference with PSD.

EPA notes that Ohio's satisfaction of the applicable infrastructure SIP PSD requirements for the 2015 ozone NAAQS has been detailed in the section addressing section 110(a)(2)(C). EPA further notes that the proposed actions in that section related to PSD are consistent with the proposed actions related to PSD for section 110(a)(2)(D)(i)(II), and they are reiterated below.

EPA has previously approved revisions to Ohio's SIP that meet certain requirements obligated by the Phase 2 Rule and the 2008 NSR Rule. These revisions included provisions that: explicitly identify NO<sub>x</sub> as a precursor to ozone, explicitly identify SO<sub>2</sub> and NO<sub>x</sub> as precursors to PM<sub>2.5</sub>, and regulate condensable PM<sub>2.5</sub> and PM<sub>10</sub> in applicability determinations and establishing emissions limits. EPA has also previously approved revisions to Ohio's SIP that incorporate the PM<sub>2.5</sub> increments and the associated implementation regulations including the major source baseline date, trigger date, and level of

significance for PM<sub>2.5</sub> per the 2010 NSR Rule. EPA is proposing to find that Ohio's SIP contains provisions that adequately address the 2015 ozone NAAQS.

States also have an obligation to ensure that sources located in nonattainment areas do not interfere with a neighboring state's PSD program. One way that this requirement can be satisfied is through an NNSR program consistent with the CAA that addresses any pollutants for which there is a designated nonattainment area within the state.

Ohio's EPA-approved NNSR regulations are contained in OAC Chapter 3745-31 and are consistent with 40 CFR 51.165. Therefore, EPA proposes to find that Ohio has met all of the applicable section 110(a)(2)(D)(i)(II) requirements relating to interference with PSD for the 2015 ozone NAAQS.

#### 4. Interference with visibility protection.

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). EPA's 2013 Guidance states that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze.

On May 10, 2018, EPA published its final approval of Ohio's regional haze plan (see 83 FR 21719). Therefore, EPA proposes to find that Ohio has met all applicable section 110(a)(2)(D)(i)(II) requirements relating to interference with visibility protection for the 2015 ozone NAAQS.

5. Interstate and international pollution abatement.

Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 and section 115 (relating to interstate and international pollution abatement, respectively). Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in state rules would be grounds for disapproval of this element.

Ohio has provisions in its EPA-approved PSD program in OAC 3745-31-06(H)(2) requiring new or modified sources to notify neighboring states of potential negative air quality impacts. Ohio's submission references these provisions as being adequate to meet the requirements of section 126(a).

Ohio does not have any obligations under any other subsection of section 126, nor does it have any pending obligations under section 115. Therefore, EPA is proposing to find that Ohio has met all applicable section 110(a)(2)(D)(ii) requirements for the 2015 ozone NAAQS.

*E. Section 110(a)(2)(E) - Adequate resources; state board requirements.*

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues. Section 110(a)(2)(E)(ii) also requires each state to comply with the requirements respecting state boards under section 128.

1. Adequate resources.

To satisfy the adequate resources requirements of section 110(a)(2)(E), the state should explain in the infrastructure SIP submission how resources and personnel and legal authority are adequate and provide any additional assurances needed to meet changes in resource requirements by the new or revised NAAQS.

Ohio's biennial budget and its environmental performance partnership agreement with EPA document funding and personnel levels for OEPA every two years. OEPA has demonstrated that it retains adequate personnel to



administer its air quality management program. As discussed in an earlier section, ORC 3704.03 provides the legal authority under state law to carry out the SIP. EPA proposes that Ohio has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2015 ozone NAAQS.

## 2. State board requirements.

Section 110(a)(2)(E) also requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (i) that any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

Ohio does not have a board that has the authority to approve enforcement orders or permitting actions as outlined in section 128(a)(1) of the CAA; instead, this authority rests with the Director of OEPA. Therefore, section 128(a)(1) of the CAA is not applicable in Ohio.

Under section 128(a)(2), the head of the executive agency with the power to approve enforcement orders or permits must adequately disclose any potential conflicts of interest. OEPA notes that EPA has previously approved provisions into Ohio's SIP addressing these requirements (46 FR 57490). Notably, ORC 102: Public Officers - Ethics contains provisions that require the Director of OEPA (and his/her delegate) to file an annual statement with the ethics committee including potential conflicts of interest; furthermore, this annual filing is subject to public inspection. Therefore, EPA proposes to find that Ohio has met the applicable infrastructure SIP requirements of this portion of 110(a)(2)(E) with respect to the 2015 ozone NAAQS.

*F. Section 110(a)(2)(F) - Stationary source monitoring system.*

Section 110(a)(2)(F) contains several requirements, each of which are described below.

1. Installation, maintenance, replacement of equipment, and other necessary steps by owners or operators of stationary sources to monitor emissions from such sources.

EPA's rules regarding how SIPs need to address requirements for source monitoring are contained in 40 CFR

51.212 ("Testing, inspection, enforcement, and compliance"). This EPA regulation requires SIPs to provide for a program of periodic testing and inspection of stationary sources, to provide for the identification of allowable test methods, and to exclude any provision that would prevent the use of any credible evidence of noncompliance.

The requirements for Ohio source testing of air contaminants are found in SIP-approved OAC 3745-15 along with general provisions that include submitting of emissions reports and measurement of emissions. SIP-approved OAC rule 3745-21-03 addresses methods of ambient air measurements for ozone. SIP-approved OAC Chapters 3745-77 and 3745-31 provide requirements for recordkeeping by sources. Ohio has the authority under SIP-approved ORC 3704.03(I) to require owners or operators of air contaminant sources to install, employ, maintain and operate such emissions, ambient air quality, meteorological, or other monitoring devices or methods as the Director of OEPA shall prescribe; to sample those emissions at such locations, at such intervals, and in such manner as the Director of OEPA prescribes; to maintain records and file periodic reports with the Director of OEPA containing information as to location, size, and height of

emission outlets, rate, duration, and composition of emissions, and any other pertinent information the Director of OEPA prescribes; and to provide such written notice to other states as the Director of OEPA shall prescribe. Ohio does not have any provisions preventing the use of any credible evidence.

Hundreds of emission tests are performed throughout Ohio each year. OEPA District Offices and local air agencies are currently required to witness 50% of all source emissions testing and review 100% of all emissions tests (fulfilling the correlation requirement of sub-element 3 discussed below). Presently, 290 Ohio sources employ 738 continuous monitoring systems for various air pollutants. OEPA oversees the operation and certification of these systems and routinely provides quarterly summary reports to EPA. These reports are also available for public inspection (partially fulfilling the public inspection component of sub-element 3 discussed below).

Based on the above, EPA proposes to find that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(F)(i) with respect to the 2015 ozone standard.

2. Periodic reports on the nature and amounts of emissions and emissions-related data from stationary sources.

To address periodic reporting requirements, the infrastructure SIP submission should include air agency requirements providing for periodic reporting of emissions and emissions-related data by sources to the air agency, as required by the following emissions reporting requirements: 40 CFR 51.211 ("Emissions reports and recordkeeping"); 40 CFR sections 51.321 through 51.323 ("Source Emissions and State Action Reporting"); and EPA's Air Emissions Reporting Rule, 40 CFR part 51, subpart A ("Air Emissions Reporting Requirements").<sup>9</sup> The section 51.321 requirement that emissions reports from states be made through the appropriate EPA Regional Office has been superseded in practice, as these data are now to be reported electronically through a centralized data portal pursuant to 40 CFR 51.45(b), which refers to the website <http://www.epa.gov/ttn/chief> which was moved to <https://www.epa.gov/chief> for the latest information on data reporting procedures. All states have existing periodic source reporting of emissions and emission inventory reporting practices. Thus, for any new or revised NAAQS, the infrastructure SIP may be able to certify existing authority and commitments and provide any

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<sup>9</sup>40 CFR sections 51.321 through 51.323 nominally address emission reporting but merely cross-reference to subpart A.

additional assurance needed to meet changes in reporting and inventory requirements associated with the new or revised NAAQS.

OEPA has reporting requirements consistent with 40 CFR 51.211, 40 CFR 51.321 to 323, and 40 CFR part 51, subpart A. Under Title V of the CAA, facilities that have the potential to emit certain amounts of air pollution are required to apply for and obtain a state-federal operating permit and pay emission fees. In Ohio, facilities are required to file on April 15<sup>th</sup> of each year. The Fee Emissions Report (FER) requirements are outlined in ORC 3745.11 and OAC rule 3745-78-02. Facilities are required to apply for and obtain an air pollution control operating permit and submit an annual emissions report for estimated actual facility wide emissions of particulate matter (PM), SO<sub>2</sub>, NO<sub>x</sub>, organic compounds (OC), lead, carbon monoxide (CO), and ammonia (NH<sub>3</sub>) no later than April 15th for the previous year. Also, OEPA has the authority under OAC 3745-15-03 to request and receive the information from regulated entities. Ohio provides an Emission Inventory Summary (EIS) to EPA to develop an annual criteria and toxic pollutant inventory pursuant to 40 CFR 51.321. Beginning with the calendar year 2006 inventory, all Ohio Title V and synthetic minor facilities are required to file

a complete inventory. Pollutants required to be reported in the EIS are: NO<sub>x</sub>, VOC, SO<sub>2</sub>, Lead, OC, CO, NH<sub>3</sub>, PM-condensable, PM-filterable, PM<sub>10</sub>-filterable, and PM<sub>2.5</sub>-filterable. Based on the above, EPA proposes to find that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(F)(ii) with respect to the 2015 ozone standard.

3. Correlation of emissions reports by the State agency with any applicable emission limitations or standards, reports shall be available at reasonable times for public inspection.

For this sub-element, the infrastructure SIP submission should reference and describe existing air agency requirements that have been approved into the SIP by EPA, or include air agency requirements being newly submitted, that provide for the following: (1) correlation<sup>10</sup> by the air agency of emissions reports by sources with applicable emission limitations or standards; and (2) the public availability of emission reports by sources. Under 40 CFR part 51 subpart G, 40 CFR 51.116 ("Data availability"), contains the requirements for correlating data. Correlation with applicable emissions limitations or

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<sup>10</sup> As defined in 40 CFR 51.116(c), the term "correlated" means "presented in such a manner as to show the relationship between measured or estimated amounts of emissions and the amounts of such emissions allowable under the applicable emission limitations or other measures."

standards is relevant only for those reports of source emissions that reflect the test method(s) and averaging period(s) specified in applicable emission limitations or standards. Thus, source reports of annual, ozone season, or summer day emissions used by the air agency to create the annual and triennial emission inventory submission to EPA under 40 CFR part 51 subpart A in general would not need to be correlated with specific emission limitations or standards, as many sources do not have applicable emission limitations defined for those averaging periods. However, if the sources have applicable emissions limitations that are defined for these averaging periods, then they would need to be correlated.

As stated previously, OEPA District Offices and local air agencies are currently required to review 100% of all source emissions tests fulfilling the correlation requirement of this sub-element. Also as stated previously, OEPA has reporting requirements consistent with 40 CFR 51.211, 40 CFR 51-321 to 323, and 40 CFR part 51, subpart A. Ohio's source emission reports are available upon request by EPA or other interested parties. Additionally, EIS Data and Reports can be downloaded from the OEPA website at <https://www.epa.ohio.gov/dapc/aqmp/eiu/eis#126013925->



download-eis-data-and-reports. Based on the above, EPA proposes to find that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(F)(iii) with respect to the 2015 ozone standard.

*G. Section 110(a)(2)(G) - Emergency powers.*

This section requires that a plan provide for authority that is analogous to what is provided in section 303 of the CAA, and adequate contingency plans to implement such authority. EPA's 2013 Guidance states that infrastructure SIP submissions should specify authority, rested in an appropriate official, to restrain any source from causing or contributing to emissions which present an imminent and substantial endangerment to public health or welfare, or the environment.

The regulations at OAC 3745-25 contain provisions which allow the Director of OEPA to determine the conditions that comprise air pollution alerts, warnings, and emergencies. Moreover, the rules contained in OAC 3745-25 provide the requirement to implement emergency action plans in the event of an air quality alert or higher. Based on the above, EPA proposes to find that Ohio has met the applicable infrastructure SIP requirements of section 110(a)(2)(G) related to authority to implement measures to restrain sources from causing or contributing

to emissions which present an imminent and substantial endangerment to public health or welfare, or the environment with respect to the 2015 ozone NAAQS.

*H. Section 110(a)(2)(H) - Future SIP revisions.*

This section requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or to an EPA finding that the SIP is substantially inadequate. As previously mentioned, ORC 3704.03 provides the Director of OEPA with the authority to develop rules and regulations necessary to meet ambient air quality standards in all areas in the state as expeditiously as practicable, but not later than any deadlines applicable under the CAA. ORC 3704.03 also provides the Director of OEPA with the authority to develop programs for the prevention, and abatement of air pollution. Based on the above, EPA proposes to find that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2015 ozone NAAQS.

*I. Section 110(a)(2)(I) - Nonattainment area plan or plan revisions under part D.*

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D

relates to nonattainment areas. EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

*J. Section 110(a)(2)(J) - Consultation with government officials; public notifications; PSD; visibility protection.*

The evaluation of the submissions from Ohio with respect to the requirements of section 110(a)(2)(J) are described below.

1. Consultation with government officials.

States must provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements.

OEPA actively participates in the regional planning efforts that include state rule developers, representatives from the FLMs, and other affected stakeholders.

Additionally, Ohio is an active member of the Lake Michigan Air Directors Consortium, which consists of collaboration with the States of Illinois, Indiana, Wisconsin, Michigan, and Minnesota. OAC 3745-31-06 is a SIP-approved rule which requires notification and the availability of public participation related to NSR actions; notification is provided to the general public, executives of the city or

county where the source is located, other state or local air pollution control agencies, regional land use planning agencies, and FLMS. OAC 3704.03(K) is a SIP-approved rule that requires OEPA give reasonable public notice and conduct public hearings on any plans for the prevention, control, and abatement of air pollution that the Director of OEPA is required to submit to EPA. Based on the above, EPA proposes to find that Ohio has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2015 ozone NAAQS.

## 2. Public notification.

Section 110(a)(2)(J) requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances.

OEPA maintains portions of its web site specifically for issues related to the 2015 ozone NAAQS.<sup>11</sup> OEPA's remote air data system (RADS) provides online reports of real time air quality data on the internet and feeds raw information to EPA's AIRNOW program. OEPA also prepares annual data reports from its complete monitoring network. Based on the above, EPA proposes to find that Ohio has met the

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<sup>11</sup> <http://www.epa.ohio.gov/dapc/sip/sip.aspx> .

infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2015 ozone NAAQS.

### 3. PSD.

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. OEPA's PSD program in the context of infrastructure SIPs has already been discussed above in the paragraphs addressing section 110(a)(2)(C) and 110(a)(2)(D)(i)(II), and EPA has determined that the proposed actions for those sections are consistent with the proposed actions for this portion of section 110(a)(2)(J).

Therefore, EPA proposes to find that Ohio has met all of the infrastructure SIP requirements for PSD associated with section 110(a)(2)(J) for the 2015 ozone NAAQS.

### 4. Visibility protection.

States are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, EPA has determined that the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs

for the 2015 ozone NAAQS.

*K. Section 110(a)(2)(K) - Air quality modeling/data.*

SIPs must provide for air quality modeling for predicting effects on air quality of emissions from any NAAQS pollutant and submission of such data to EPA upon request. OEPA reviews the potential impact of all major and some minor new and modified sources using computer model simulations consistent with 40 CFR part 51, appendix W, Guidelines on Air Quality Models. The regulatory requirements related to PSD modeling can be found in SIP-approved rule OAC 3745-31-18, and Ohio's authority to require modeling conducted by other entities, e.g., applicants, and the state's authority to perform modeling for attainment demonstrations can be found in SIP-approved ORC 3704.03(F). Ohio also develops area-wide air quality modeling related to attainment demonstrations. Ohio's authority to conduct this type of modeling lies within SIP-approved ORC 3704.03(A), (C), (E), (N) and (X). These modeling data are available to EPA or other interested parties upon request. Based on the above, EPA proposes to find that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2015 ozone NAAQS.

*L. Section 110(a)(2)(L) - Permitting fees.*

This section requires SIPs to mandate each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit. OEPA implements and operates the title V permit program, which EPA approved on August 15, 1995 (60 FR 42045); revisions to the program were approved on November 20, 2003 (68 FR 65401). Additional rules that contain the provisions, requirements, and structures associated with the costs for reviewing, approving, implementing, and enforcing various types of permits can be found in ORC 3745.11 and OAC rule 3745-78-02. Based on the above, EPA proposes to find that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(L) with respect to the 2015 ozone NAAQS.

*M. Section 110(a)(2)(M) - Consultation/participation by affected local entities.*

States must consult with and allow participation from local political subdivisions affected by the SIP. OEPA follows approved procedures for allowing public participation, consistent with SIP-approved OAC 3745-47. Consultation with local governments is authorized through ORC 3704.03(B). OEPA provides a public participation process for all stakeholders that includes a minimum of a 30-day comment period and opportunity to request a public

hearing for all SIP-related actions. Based on the above, EPA proposes to find that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2015 ozone NAAQS.

### **III. What action is EPA taking?**

EPA is proposing to approve most elements of a submission from Ohio certifying that its current SIP is sufficient to meet the infrastructure requirements in sections 110(a)(1) and (2) with respect to the 2015 ozone NAAQS. EPA's proposed actions for the state's satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) are contained in the table below.

Element	2015 ozone NAAQS
(A) - Emission limits and other control measures.	A
(B) - Ambient air quality monitoring/data system.	A
(C)1 - Program for enforcement of control measures.	A
(C)2 - PSD.	A
(D)1 - I Prong 1: Interstate transport - significant contribution.	NA
(D)2 - I Prong 2: Interstate transport - interfere with maintenance.	NA
(D)3 - II Prong 3: Interstate transport - prevention of significant deterioration.	A
(D)4 - II Prong 4: Interstate transport - protect visibility.	A
(D)5 - Interstate and international pollution abatement.	A
(E)1 - Adequate resources.	A
(E)2 - State board requirements.	A
(F)1 - Monitoring/Testing Source Emissions	A
(F)2 -Periodic Source Emissions Reports	A
(F)3 - Correlation and Public Availability of Source Emissions Reports and Data	A



(G) - Emergency power.	A
(H) - Future SIP revisions.	A
(I) - Nonattainment planning requirements of part D.	*
(J)1 - Consultation with government officials.	A
(J)2 - Public notification.	A
(J)3 - PSD.	A
(J)4 - Visibility protection.	*
(K) - Air quality modeling/data.	A
(L) - Permitting fees.	A
(M) - Consultation and participation by affected local entities.	A

In the above table, the key is as follows:

A	Approve
NA	No Action / Separate Rulemaking
*	Not germane to infrastructure SIPs

#### **IV. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under

Executive Orders 12866 (58 FR 51735, October 4, 1993)  
and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations,  
Nitrogen dioxide, Ozone, Reporting and recordkeeping  
requirements, Volatile organic compounds.

Dated: February 4, 2021.

**Cheryl Newton,**

*Acting Regional Administrator, Region 5.*

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